

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 423 of 2001

Reserved on : 11.12.2019

Delivered on : 20.12.2019

Chaindas, S/o Chaituram, aged 29 years, R/o Village- Garaka, P.S. Dondilohara, District- Durg (C.G.) **---- Appellant**

Versus

The State of Chhattisgarh **---- Respondent**

For Appellant : Mr. Anand Kumar Gupta, Advocate.

For State/respondent : Mrs. Shubh Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 26.02.2001 passed by Additional Sessions Judge, Balod, District- Durg (C.G.) in Session Trial No. 255/2000, wherein the said court convicted the appellant for commission of offence under Sections 376 (1), 450 & 506 (Part-II) of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 500/-, R.I. for 3 years and fine of Rs. 250/- & R.I. for 3 years and fine of Rs. 250/- respectively with further default stipulations. All the sentences to run concurrently.
2. In the present case, prosecutrix is PW-5. As per version of the prosecution, the appellant entered into house of the prosecutrix in intervening night of 16-17.05.2000 and committed sexual intercourse with her forcefully and threatened her to kill. The matter was reported at Police Station- Dondilohara, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-
 - (i) From evidence of Mahendra Kumar (PW-7) and version of the prosecutrix, it is established that the prosecutrix is consenting party and her age is more than 18 years, therefore, no offence is made out.
 - (ii) As per Ex.P/2, date of birth of the prosecutrix is 02.01.1982 and date of incident is 16.05.2000.
 - (iii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the prosecutrix is handicapped for which a certificate is produced and it is not a case of consent, therefore, the finding arrived at by the trial court is not liable to be interfered with invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the records.
6. In the present, the date of incident is 16.05.2000 and the report was lodged at Police Station- Dondilohara after one day i.e. on 18.05.2000 where name of the appellant is mentioned as culprit and his act of rape is also mentioned in the said FIR. The prosecutrix (PW-5) deposed before the trial court that on the date of incident at night she and her near brother namely Mahendra were sleeping in a room where the appellant entered into the said room and tied her mouth. As per version of the prosecutrix, the appellant committed rape on her. When her brother woke-up, the appellant threatened him to kill and thereafter, the appellant moved out of the house. As per version of this witness, when her mother and father returned from a place of marriage, she informed about the incident to them and thereafter, the report was lodged. Version of this witness is supported by her father namely Koduram (PW-6). It is further

supported by version of Mahendra Kumar (PW-7) who is eye-witness account to the incident. It is further supported by version of Dr. S.S. Devdas (PW-8) who examined the appellant and found him capable of intercourse.

7. Learned counsel for the appellant submits that as per version of Mahendra Kumar (PW-7) (Para 5), he saw the appellant and the prosecutrix having conversation, but version of this witness is different from his earlier version recorded by the investigating officer under Section 161 of the Cr.P.C. As per his earlier version, there was no conversation between the appellant and the prosecutrix. Looking to the fact that the appellant tied mouth of the prosecutrix during commission of rape, the same cannot be termed as consensual act. If the prosecutrix would have been consenting party, there was no need to tie her mouth with cloth, therefore, the argument advanced on behalf of the appellant is not sustainable.
8. The statement of the prosecutrix is quite natural and inspiring confidence and when her evidence is inspiring confidence, no corroboration is required. In the present case, there is ample corroboration from evidence of eye-witness account to the incident and other supporting piece of evidence.
9. It is true that there is one day delay in lodging the report, but the delay in lodging the report in the case of sexual assault cannot be equated with the case involving other offences. The family members after giving it serious thought decided to lodge the report. Where report of rape is to be lodged, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. There are several factors which weigh in mind of the prosecutrix and her family members before coming

to the Police Station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, in rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In view of the above, the argument advanced on behalf of the appellant is not sustainable.

10. The trial court elaborately discussed the entire evidence and after reassessing the same, this Court has no reason to say that the appellant has been falsely implicated. There is no reason to disbelieve the evidence of the prosecutrix and eye-witness account to the incident. The act of the appellant falls within mischief of Sections 376 (1), 450 & 506 (Part-II) of IPC, 1860 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

11. The trial court awarded R.I. for 7 years for commission of offence under Section 376 (1) of IPC, which is minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
12. The appellant is reported to be on bail, his bail bond is cancelled. The trial court will prepare super-session warrant and issue warrant of arrest against the appellant and after his arrest, he be sent back to the concerned jail for serving out the remaining part of the jail sentence. The trial court shall submit compliance report on or before 30th April, 2020.

Sd/-
(Ram Prasanna Sharma)
Judge